Calendar No. 397

99TH CONGRESS *1st Session* | SENATE | REPORT 99-180

AMENDING TITLE 25, UNITED STATES CODE, RELATING TO INDIAN EDUCATION PROGRAMS, AND FOR OTHER PURPOSES

NOVEMBER 13 (legislative day, NOVEMBER 12), 1985.—Ordered to be printed

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Mr. ANDREWS, from the Select Committee on Indian Affairs, submitted the following

REPORT

[To accompany S. 1621]

The Select Committee on Indian Affairs, to which was referred the bill (S. 1621) to amend title 25, United States Code, relating to Indian education programs, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill (as amended) do pass.

The amendment in the nature of a substitute is as follows:

Strike all after the enacting clause and insert in lieu thereof the following:

That Section 1128 of P.L. 95-561 (25 U.S.C. 2008), as amended, is amended by—

(1) deleting "Indian students" in subsection (a)(1) and substituting in lieu thereof "eligible Indian students"; and

(2) deleting "Indian child" between the words "for each" and "attending such school", and "for an" and "in public school" in subsection (b), and substitute in lieu thereof "eligible Indian student"; and

(3) by adding the following new subsections:

"(f) In this section "eligible Indian student" means a student who—

"(1) is a member of or is at least a one fourth degree Indian blood descendant of a member of an Indian tribe which is eligible for the special programs and services provided by the United States through the Bureau of Indian Affairs to Indians because of their status as Indians, and

"(2) resides on or near an Indian reservation or meets the criteria for attendance at a Bureau off-reservation boarding school.

"(g)(1) An eligible Indian student may not be charged tuition for attendance at a Bureau or contract school. A student attending a Bureau school under clause 2(C) of this subsection may not be charged tuition.

"(2) The Secretary may permit the attendance at a Bureau school of a student who is not an eligible Indian student if—

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"(A) the Secretary determines that the student's attendance will not adversely affect the school's program for eligible Indian students because of cost, overcrowding, or violation of standards,

"(B) the school board consents, and

"(C) the student is a dependent of a Bureau, Indian Health Service, or tribal government employee who lives on or near the school site, or

"(D) a tuition is paid for the student that is not more than that charged by the nearest public school district for out-of-district students. The tuition collected is in addition to the school's allocation under this section.

"(3) The school board of a contract school may permit students who are not eligible Indian students under this subsection to attend its contract school and any tuition collected for those students is in addition to funding under this section."

SEC. 2. Any other provision of law notwithstanding, the Secretary of the Interior shall count for funding purposes under section 1128 of Public Law 95-561 during the 1985-1986 academic year each student attending a Bureau or contract school during the count week for that year if the student (a) was counted for funding purposes under section 1128 for the 1984-1985 academic year and (b) is an eligible Indian student under the amendment to section 1128 in section 1 of this act.

SEC. 3. The following provisions of law are hereby repealeld:

(1) In the Act of March 1, 1907, ch. 2285, 34 Stat. 1015, the first full paragraph on page 1018 (25 U.S.C. 288).

(2) In the Act of March 3, 1909, ch. 263, 35 Stat. 781, the last two provisos in the second full paragraph on page 783 (25 U.S.C. 289).

(3) In the Act of May 27, 1918, ch. 86, 40 Stat. 561, the third proviso in the paragraph under the heading "SUPPORT OF INDIAN SCHOOLS" on page 564 (25 U.S.C. 297).

PURPOSE

S. 1621 is intended to bring consistency to the eligibility criteria used for BIA programs. It defines the children who, if enrolled in BIA schools, are eligible to be counted for funding under the Indian School Equalization Program (ISEP) formula.

BACKGROUND

Since 1918, there has been a law on the books, codified from language that appeared in an appropriations bill in that same year, to the effect that no monies may be used "to educate children of less than one-fourth Indian blood whose parents are citizens of the United States . . . and where there are adequate free school facilities provided." (25 USC 297)

Prior to this past year, BIA regulations on this section left implementation to the case-by-case discretion of local education authorities. The Indian Education Amendments of 1978 require formula funding for BIA and contract schools based on the number of students enrolled, however, and this has moved the BIA to restrict eligibility and thus restrict funding. Unfortunately, the 1978 amendments are silent on the issue of which students are to be considered eligible for funding. S. 1621 amends the 1978 Act to correct this omission.

Before the 1978 Act, BIA schools were funded on a budgetary basis, i.e., each school was funded at a dollar amount deemed necessary to operate that school in the following fiscal year. Once the 1978 per pupil scheme became part of the budget/appropriations process, the BIA began to seek ways to reduce the number of students who could be counted and, accordingly, resurrected the 1918 law.

On May 10, 1985, the BIA issued proposed regulations to revise existing local option regulations implementing section 297 (along

with sections 288 and 289 of 25 USC). The BIA intended to have final regulations in place by August, in time to make reductions in the fall 1985 student count. Tribes and other interested parties expressed strong opposition to the proposed regulations. Those regulations would have included in the definition of an "adequate public school" schools providing bus service to within a one mile walk for an elementary school child and a bus ride of up to 50 miles or one and one-half hours each way. They would have disqualified for funding many Indian students who are members of federally recognized tribes and who are now enrolled in and attending BIA schools. Furthermore, the regulations would have even prohibited the attendance of the children at the schools, thus going beyond the intent of Section 297. Though these regulations have not yet been finalized, the BIA is refusing to fund, for the current 1985–86 academic year, those students in BIA schools who are less than ¼ degree Indian blood, regardless of tribal membership.

Testimony presented at the Committee's September 17 hearing attested to the Indian community's unanimous opposition to the ¼ blood restriction. Three major and consistent themes characterized the testimony: the restriction discriminates against certain children and sets them apart as a separate class based solely on racial factors; it is inconsistent with eligibility factors used for all other BIA programs; and it interferes with the right of Indian tribes to set their own membership criteria. A further argument is that the intent of the 1918 law was not as it is now being interpreted and that, in any case, it only applied to 1918 appropriations. Why or how it was codified is not known. Furthermore, the Committee believes the law has been repealed by implication in many subsequent enactments.

On the discrimination issue, witnesses expressed serious reservations about the constitutionality of discriminating against certain children based on racial factors alone. The Solicitor's Office of the Department of the Interior is expected to respond to these concerns, but had not issued an opinion prior to the Committee's meeting to consider S. 1621.

Eligibility for all BIA programs, other than education, is based on membership in a tribe recognized as eligible for the special programs and services provided by the BIA. Since 1918, Congress has enacted a number of laws specifically dealing with the education of Indian children and none of them even mention blood quantum, Thus, Indian children who are enrolled members of federally recognized tribes are eligible for Impact Aid, Johnson O'Malley, Chapter I and Title IV. The BIA asserts that the 1918 law is applicable to JOM, which was passed in 1934, but clearly cannot apply it to the other programs, such as Title IV which are operated by the Department of Education. Within the BIA, all children who are members of federally recognized tribes are eligible for social services, Indian child welfare services, and tribal colleges. In addition, the Self-Determination Act (P.L. 93–638), which allows tribes to contract to run BIA education programs, contains a definition of Indians that refers only to tribal membership. Thus, a strong argument can be made that the 1918 law has been repealed by implication in many subsequent enactments of Congress. (See appendix below for a list

of the laws and eligibility definitions passed since 1918, all of which relate directly or indirectly to education.)

The right of tribes to govern their own internal affairs, including membership, has been affirmed numerous times by the Congress and the courts. Tribal affiliation is, in fact, a political, not a racial matter. Whatever federal benefits accrue through Indian preference, the Supreme Court has said, are not directed to a racial group called "Indians" but rather to members of federally recognized tribes. This excludes those individuals who may otherwise be racially classified as Indian.

Section 297 was actually lifted from a paragraph that also provided support for Indian day and industrial schools, not otherwise given support. It went on to state: "No part of this appropriation shall be used for the support of Indian day and industrial schools where specific appropriation is made." In the 1918 appropriations act, a number of Indian schools were provided for with specific appropriations and the proviso of what is now section 297 was not to apply to them. In any event, it seems clear that Congress intended the restriction to mean that less than ¼ bloods should not take room away from those children who were more than ¼ blood, since space in BIA schools seems to have been very limited.

The BIA, representing the Administration, testified against the bill, saying that it would "considerably" expand the BIA's education service population. It opposed both the eligibility of students who are members of federally recognized tribes and the provision of S. 1621, as introduced, to allow attendence of all students who are dependents of federal or tribal employees, provided they reside on or near a BIA school site.

As to the first objection, the BIA admitted on the record that it had no figures to support its allegations. It mentioned that 93 tribes have less than quarter degree blood requirements. When asked to submit for the record a list of those tribes and their geographical relationship to BIA schools, the BIA sent the Committee a list of 37 tribes with no blood quantum at all. Of those, 18 are in Oklahoma and California where there are no BIA day or contract schools (there are two boarding schools in Oklahoma and one in California). Twelve tribes are in locations that are not served by any BIA contract or day school. Of the remaining seven, two have adopted quarter-blood requirements. The five other tribes are the Shoshone-Bannock (Idaho), served by a contract school with 61 students; the Sac and Fox (Iowa), served by a contract school with 73 students; the Snata Clara Pueblo (New Mexico), served by a day school with 97 students; the Oglala Sioux (South Dakota), served by two contract schools, four day schools and one boarding school with a total student population of about 2400; and the Puyallup (Washington), served by a contract school with 96 children. Of the total number of children served and who are tribal members, there is no way to tell how many are, in fact, less than quarter blood.

According to the BIA, there were 922 students ineligible for funding who were enrolled last year in BIA funded schools. Of these, 298 were not Indian and 590 were Indians of less than ¼ degree; the remainder were ineligible because of age. Impact Aid funds are provided for about half of the non/Indians, most of whom are dependents of federal or tribal employees. The rest are absorbed into

the school system. There are no accurate figures on how many of the 590 have actually been funded by ISEP in past years, but it is certain that at the Cherokee School in North Carolina there are 140 tribal member children with less than ¼ Indian blood who have been funded every year.

On the issue of the eligibility of children of federal employees who reside on or near the school site, the Administration testified against allowing, without tuition, the attendance of these children. The BIA did say its objections would be reduced considerably if the bill were limited to employees of the BIA and the Indian Health Service. Employees of those two agencies are hired under Indian preference, meaning they are tribal members or at least ½ blood Indian. Thus, the vast majority of their children are also tribal members or at least one quarter blood. The BIA does agree that the opportunity for the children of employees to attend schools, particularly where one or both of their parents teach, is a great asset in the recruitment and retention of good employees. S. 1621, as approved by the Committee, limits eligibility to dependents of tribal, BIA and IHS employees.

One additional point: Even if the BIA instituted regulations that would force many Indian children into the public schools, these same children would be eligible to be counted for other federal programs—including Impact Aid, Chapter I (if disadvantaged) and Title IV—because of their status as Indians. In other words, the Committee believes the cost to the federal government could be significantly higher for the education of these children than it is now. The BIA testified that it had done no comparative cost analysis. But, the Eastern Cherokee Tribe testified that, in federal impact aid dollars alone, it would cost $225,000 more to educate the 140 children now in the Cherokee School if they were sent, instead, to public schools.

The irony is that some Indian children are Indian enough for membership in a tribe and thus eligible for virtually all BIA services and programs, but are not "Indian enough" to go to school with their cousins, half-siblings, neighbors and friends. For over a century, the BIA has provided funds for all tribal children who attend the Cherokee Indian School, in spite of the 67-year-old law that it suddenly wants to implement. The Committee sees no reason to refuse service or funding to children who are enrolled tribal members. The Committee believes that a blood quantum restriction could be very damaging, socially, psychologically, and culturally, to children affected by such a restriction. The Committee thus adopts the view that consistency in eligibility for BIA programs is necessary and that tribal membership should be the determining criterion.

Appendix

Definitions of Indians in Laws Relating to Education

1921: Snyder Act: Act is general authority for expenditure of funds for the "benefit, care, and assistance of the *Indians throughout the United States"* for such purposes as education, health, economic assistance, irrigation systems, etc. (25 USC 13)

1934: Johnson-O'Malley Act: Act authorizes Secretary to enter into contracts with state, local subdivisions, or other institutions, for the education, medical attention, etc., of *"Indians in such State".* (25 USC 452)

1934: Indian Reorganization Act: Act sets forth procedures for the incorporation and charter of Indian tribes and defines Indians as *"all persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction . . . and shall further include all other persons of one-half or more Indian blood."* (25 USC 479) Note: Indian preference in hiring is given to all Indians who are members of federally recognized tribes and, for non-enrolled Indians, they must possess ½ degree Indian blood to qualify for preference.

1950: Impact Aid (874): Act provides federal funding to public schools for the education of children who live on federal lands. The Act includes payments for *Indian children who live on trust lands* on which no property taxes are paid and who are educated in public schools. There is no distinction between Indians in this act—the only requirement is that they reside on trust lands. (20 USC 236 et seq.)

1972: Indian Elementary and Secondary School Assistance Act (Title IV): Act provides basic support for supplemental programs in public schools for Indian children, for pilot and demonstration projects, for programs for adult Indians, and fellowships for training of teachers of Indian children. It also establishes both the Office of Indian Education at the Department of Education and a National Advisory Council on Indian Education. The Act defines Indian as *"any individual who (1) is a member* of a tribe, band, or other organized group of Indians, including those tribes, bands, or groups terminated since 1940 and those recognized by the State in which they reside, or who is a descendant, in the first or second degree, of any such member, or (2) *is considered by the Secretary of the Interior to be an Indian for any purpose . . ."* (20 USC 1221h)

1975: Indian Self-Determination and Education Assistance Act. Act provides for contracts with Indian tribes and organizations to operate BIA programs, including education. Contract schools are authorized by this Act. An Indian *"means a person who is a member of an Indian tribe* . . . which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians". (25 USC 450b)

1978: Indian Child Welfare Act. Act provides to tribes for foster care and other services for children. An Indian means *"any person who is a member of an Indian tribe".* (25 USC 1903)

1978: Tribally Controlled Community Colleges Act. Act provides funding for students enrolled in tribal colleges. An Indian *"means a person who is a member of an Indian tribe."* (25 USC 1801).

Summary of Provisions

The proposed substitute bill amends the Indian Education Amendments of 1978 by defining as eligible for ISEP funding those children who are members of federally recognized tribes or who are

at least one quarter degree Indian blood. It also permits children of IHS and BIA employees, who are otherwise not eligible for funding, to attend schools without tuition, provided they live on or near the school site. The bill tracks the provisions of Sections 288 and 289 of Title 25 USC regarding attendance of white children at BIA schools by requiring tuition fees that are comparable to fees charged by the nearest public school district.

The bill grandfathers in, for the current academic year, those children who attended BIA schools and were funded last year, if they are eligible under Section 1 of the bill. The bill repeals Section 297, along with Sections 288 and 289 of title 25 of the United States Code, but incorporates the language of 288 and 289 as much as possible, and retains the quarter blood limit for those children who are not enrolled members of federally recognized tribes.

Legislative History

S. 1621 was introduced on September 11, 1985, by Senators Melcher, Andrews, Burdick, Abdnor, East and Helms. A similar bill, H.R. 3273, was introduced in the House on the same day by Representative Kildee. The Select Committee on Indian Affairs held a hearing on September 17 with testimony from the Administration, the Eastern Cherokee Tribe and three other tribes, the National Federation of Federal Employees, the National Congress of American Indians, the National Tribal Chairman's Association, and the National Indian School Board Association.

Committee Recommendations and Tabulation of Vote

The Select Committee on Indian Affairs, in open business session on November 7, 1985, by a unanimous vote of a quorum present, recommends that the Senate pass S. 1621, as amended.

Committee Amendments

The Committee recommends an amendment in the nature of a substitute.

Section-by-Section Analysis

S. 1621, as amended by an amendment in the nature of a substitute

Section 1 amends the 1978 Indian Education Amendments by defining, for purposes of Indian School Equalization Program funding, an eligible Indian student as one who is a member of an Indian tribe or a ¼ Indian blood descendant of a member of an Indian tribe which is eligible for BIA programs and services and who resides on or near an Indian reservation or who meets criteria for attending a BIA boarding school.

The section provides that the Secretary may allow attendance of other children at BIA schools, under rules and regulations he prescribes, upon payment of tuition, except that dependent children of IHS and BIA employees who live on or near the school site may not be charged tuition. It is expected that the rules and regulations will address space needs so that no overcrowding will result because of attendance at BIA schools by non-Indian children.

Section 2 provides that those students counted for ISEP in the 1984-1985 academic year and who are enrolled in the current academic year will be counted for ISEP, provided they are eligible under section 1.

Section 3 repeals section 288, 289, and 197 of 25 USC.

Cost and Budgetary Considerations

The Cost estimate for S. 1621, as amended, as provided by the Congressional Budget Office, is set forth below:

U.S. Congress,
Congressional Budget Office,
Washington, DC, November 7, 1985.

Hon. Mark Andrews,
Chairman, Select Committee on Indian Affairs,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed S. 1621, as ordered reported by the Select Committee on Indian Affairs on November 1, 1985.

The purpose of S. 1621 is to amend title 25 of the United States Code relating to Indian Education programs. This legislation would clarify who may attend schools operated by the Bureau of Indian Affairs and who would be counted to receive funding when determining the school's allocation for funds. The bill could affect the allocation of federal funding but is not expected to result in a change in the amount of federal funding. This bill would not affect the budgets of state and local governments.

If you have any questions please contact me or have one of your staff call Bernadette Costello or Deborah Kalcevic.

With best wishes,

Sincerely,

Rudolph G. Penner, *Director.*

Regulatory Impact Statement

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee believes that S. 1621, as amended, will have a minimal impact on regulatory or paperwork requirements.

Executive Communications

The only Executive communication received by the Committee was in the form of testimony offered at the September 17, 1985, hearing by Nancy Garrett, Acting Director, Office of Indian Education Programs, Department of the Interior. The statement follows:

Statement of Nancy C. Garrett, Acting Director, Office of Indian Education Programs, Department of the Interior

Mr. Chairman, I am pleased to present the views of the Department of the Interior on S. 1621, a bill "To amend title 25 U.S.C. relating to Indian education programs, and for other purposes."

S. 1621 repeals portions of the Acts of March 1, 1907 (25 U.S.C. 288), March 3, 1909 (25 U.S.C. 289), and May 25, 1918 (25 U.S.C. 297), which limit the use of appropriated funds to Indians of one fourth or more degree Indian blood; to Indians of less than one fourth degree Indian blood where adequate free school facilities are not available; and require tuition payments for non-Indian children attending Bureau-funded schools. The bill further amends P.L. 95-561 (25 U.S.C. 2008) to change the term "Indian student" to "eligible Indian students" and defines eligible Indian students as students who are members of a Federally recognized Tribe or at least one fourth degree Indian blood. Dependents of Federal or tribal government employees who reside on or near a school site would be allowed to attend the Bureau-funded school without charge. Ineligible students may attend Bureau-operated schools under regulations prescribed by the Secretary of the Interior, and tuition not to exceed fees charged by the nearest public school district may be charged. Tribal-operated schools may allow ineligible students to attend their schools and may also charge tuition.

We are strongly opposed to the enactment of S. 1621.

This bill has the potential for considerably expanding the service population of our schools. Assuming the same level of Indian School Equalization Program (ISEP) funding, a significant increase in the number of eligible students would reduce the dollar amount provided under ISEP for every student in the BIA system. Based strictly on ineligible students enrolled in the schools last school year and for which, with one exception, ISEP funds were not provided, the eligible student population would be increased instantly by approximately 900. This impact would be major. For example, large schools like Wingate High School would receive about $75,000 less for every 900 students added to the system. This equates to three or four teachers.

Although we do not know exactly how many children who are currently ineligible would become eligible and choose to attend Bureau-funded schools, the number could be more than twice the 900 students enrolled. In support of this, a 1979 survey of 188 tribal constitutions revealed that 93 had membership requirements of less than quarter blood.

The 900 student figure cited above includes approximately 100 students who are children of parents employed in BIA-funded schools. S. 1621 would permit children of any Federal or tribal employee to attend a BIA-funded school. Again, while there is no way to accurately predict the impact, the number of Federal employees employed by Indian Health Service, Bureau of Reclamation, Bureau of Land Management, Forest Service, Fish and Wildlife Service, National Park Service, Corps of Engineers, and others could have a dramatic impact on school enrollment and, therefore, on the present funding level in our BIA-funded schools.

The Bill, in subsection (f)(3), effectively opens enrollment to any student, without restrictions, except that tuition may be charged. While the bill establishes a ceiling for the amount of tuition which may be charged, it is silent on a minimum level. The bill does not address either a floor or a ceiling level for contract schools. In addition, the Bureau's research indicates that in some areas it costs more to educate a child in a Bureau-funded school than in a public

school. Therefore, establishment of the public school level as a ceiling results in the Bureau school having to absorb the difference. The bill also does not address whether ISEP funds may be provided for those students. The Bureau assumes that the intent is that they cannot.

Aside from the funding issue, the Bureau is concerned about the potential impact of additional students on facilities and staffing. Concerning facilities, the schools may become overwhelmed by applications and have to accept students on a first-come, first-serve basis. This could lead to the exclusion of students who have 25 percent or more Indian blood. Schools may use the number of denied students as a justification for new school construction or major facility improvement and repair.

At a time when the Bureau has just issued academic standards, which include staff/student ratios, this bill could result in the schools having to violate the very standards which have just been published. Also, the Administration is making every effort to reduce Federal employment, and this bill could have the opposite effect. Because students would be drawn from public schools, enactment of this Bill could lead to reduced employment there, as well as a reduction in the level of impact aid funding received by the affected public school districts. Bureau schools are already experiencing some problems in recruiting the best qualified teachers, and major increases in student enrollment simply compounds the problem.

Most of these same concerns apply to both Bureau-operated and contract schools.

We are also strongly opposed to section 2 of the bill because enforcement over the last two years of attendance boundaries and enrollment criteria have altered attendance patterns for many students. However, students are now adjusted to these changes. We think this section is unnecessary and would only result in confusion for students, parents, school boards, and school staff. In addition, this disregard of attendance boundaries would appear to violate the intent of the Congress as expressed in the FY 1985 Appropriations Act.

In addition to its elementary and secondary education programs, the Johnson-O'Malley, Higher Education, Adult Education Programs, and BIA Post Secondary Schools programs require 25 percent or more Indian blood to be eligible for BIA funding. In a recent court case, Diane Zarr vs Earl Barlow, et al., the United States District Court of the Northern District of California held that the 25 percent minimum requirement is appropriate for the scholarship program and is not arbitrary, capricious, or an abuse of discretion.

In the past several years, the Bureau has encouraged tribes to tighten up their membership requirements and has recommended that newly recognized and restored tribes use the quarter blood requirement as a basis for membership. In this era of severely limited Federal appropriations, it is imperative that we not expand our service population and thereby diminish the funds available for those now eligible for our services. We think the quarter blood requirement is a fair basis for eligibility for our education programs, and we strongly oppose this bill.

We also have a number of technical problems with the bill.

This concludes my prepared statement. I will be happy to answer any questions you may have.

CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes the following changes in existing law (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

EDUCATION AMENDMENTS OF 1978

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TITLE XI—INDIAN EDUCATION

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PART B—BUREAU OF INDIAN AFFAIRS PROGRAM

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ALLOTMENT FORMULA

SEC. 1128. (a) The Secretary shall establish, by regulation adopted in accordance with section 1138, a formula for determining the minimum annual amount of funds necessary to sustain each Bureau or contract school. In establishing such formula, the Secretary shall consider—

(1) The number of [Indian students] *eligible Indian students* served and size of the school;

* * * * * * *

(b) Notwithstanding any other provisions of law, Federal funds appropriated for the general local operation of Bureau and contract schools, shall be allotted pro rata in accordance with the formula established under subsection (a) of this section, except that, in the case of any such school which is located in a school district of a local educational agency which receives from Federal funds under other provisions of law an average payment per Indian child attending such school in that district which is higher than the amount which would be received by such Bureau or contract school under such formula for each [Indian child] *eligible Indian students* attending such school, the payment to be received by the school under this section for each such child shall be equal to such average payment for an [Indian child] *eligible Indian students* in public school in that district.

* * * * * * *

(f) In this section "eligible Indian student" means a student who—

(1) is a member of or is at least a one fourth degree Indian blood descendant of a member of an Indian tribe which is elibible for the special programs and services provided by the United

States through the Bureau of Indian Affairs to Indians because of their status as Indians, and

(2) resides on or near an Indian reservation or meets the criteria for attendance at a Bureau off-reservation boarding school.

(g) (1) An eligible Indian student may not be charged tuition for attendence at a Bureau or contract school. A student attending a Bureau school under clause 2(C) of this subsection may not be charged tuition.

(2) The Secretary may permit the attendence at a Bureau school of a student who is not an eligible Indian students if—

(A) the Secretary determines that the student's attendence will not adversely affect the school's program for eligible Indian students because of cost, overcrowding, or violation of standards,

(B) the school board consents, and

(C) the student is a dependent of a Bureau, Indian Health Service, or tribal government employee who lives on or near the school site, or

(D) a tuition is paid for the student that is not more than that charged by the nearest public school district for out-of-district students. The tuition collected is in addition to the school's allocation under this section.

(3) The school board of a contract school may permit students who are not eligible Indian students under this subsection to attend its contract school and any tuition collected for those students is in addition to funding under this section.

* * * * * * *

ACT OF MARCH 1, 1907 (25 U.S.C. 288)

[White children may, under rules and regulations prescribed by the Commissioner of Indian Affairs, be admitted to any Indian day school: *Provided,* That the tuition fees charged for such children shall in no case exceed the tuition fees allowed or charged by the State or county in which such school is situated for the children admitted in the common schools of such State or county: *And provided further,* That all tuition fees paid for white children enrolled in Indian day schools shall be deposited in the United States Treasury to reimburse the funds out of which the schools last mentioned are maintained.]

* * * * * * *

ACT OF MARCH 3, 1909 (25 U.S.C. 289)

[White children may, under rules prescribed by the Commissioner of Indian Affairs, be admitted to Indian boarding schools on the payment of tuition fees at a rate to be fixed in said rules: *Provided further,* That all tuition fees paid for white children so enrolled shall be deposited in the United States Treasury to reimburse the fund out of which the school is supported.]

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ACT OF MAY 27, 1918 (25 U.S.C. 297)

[No appropriation, except appropriations made pursuant to treaties, shall be used to educate children of less than one-fourth Indian blood whose parents are citizens of the United States and of the State wherein they live and where there are adequate free school facilities provided.]

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